

**Eldon L. (Butch) Reid, a sole proprietor, d/b/a B&B Services Electric Co. and International Brotherhood of Electrical Workers, Local No. 611.**  
Case 28–CA–13097

January 29, 1998

#### SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

On September 26, 1995, the National Labor Relations Board issued a Decision and Order,<sup>1</sup> *inter alia*, ordering Eldon L. (Butch) Reid, a sole proprietor, d/b/a B&B Services Electric Co., to make whole Marlin Spreacker, its unit employee, for loss of earnings and other benefits resulting from his discharge in violation of the National Labor Relations Act.

A controversy having arisen over the amount of backpay due the discriminatee, on October 9, 1997, the Regional Director for Region 28 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification,<sup>2</sup> the Respondent failed to file an answer.

By letter dated December 4, 1997, Region 28 advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by December 12, 1997, summary judgment would be sought. The Respondent filed no answer.

On December 22, 1997, the General Counsel filed with the Board a Motion to Transfer Case to the Board and for Summary Judgment, with exhibits attached. On December 29, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.

<sup>1</sup> 319 NLRB No. 12. On November 17, 1997, the United States Court of Appeals for the Tenth Circuit entered its Judgment enforcing the Board's Order.

<sup>2</sup> Although a copy of the compliance specification served on the Respondent on November 12, 1997, by certified mail was returned to the Regional Director as being unclaimed, failure or refusal to accept service cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

#### Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatee is as stated in the compliance specification and we will order payment by the Respondent of these amounts to the discriminatee, plus interest accrued on said amounts to the date of payment.

#### ORDER

The National Labor Relations Board orders that the Respondent, Eldon L. (Butch) Reid, a sole proprietor, d/b/a B&B Services Electric Co., Albuquerque, New Mexico, its officers, agents, successors, and assigns, shall make whole Marlin Spreacker, by paying him \$7043, plus interest and minus tax withholdings required by Federal and state laws.